

cation or mitigation", the record clearly discloses that the quoted statement is untrue.

To the Appellate Division, on the motion to confirm the Report of the Referee, petitioner submitted an affidavit (Rec. p. 227) in which he unqualifiedly swore that every statement he had made about a judge in the published letters was true (Rec. p. 235, fols. 707, *et seq.*) and challenged the Association not only to specify any statement in them which was untrue but himself specified a series of especially significant statements he had made which he believed required the Court to elicit some denial on the part of the Association.

As was pointed out in our original brief, the Association obtained two adjournments of the return day of the motion upon which this affidavit of your petitioner was submitted in which to file an answer to it and finally never voluntarily filed any such answer and was never required by the Appellate Division to do so.

#### CONCLUSION.

Petitioner respectfully urges that the petition for certiorari in the instant case should be granted.

Dated, December 1st, 1943.

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